

KUDMAN TRACHTEN ALOE LLP
ATTORNEYS AT LAW

THE EMPIRE STATE BUILDING
350 FIFTH AVENUE
SUITE 4400
NEW YORK, NY 10118
(212) 868-1010

TELECOPIER (212) 868-0013
www.kudmanlaw.com

PAUL H. ALOE†
STUART R. KUDMAN*
GARY TRACHTEN††

MICHELLE S. BABBITT*

THOMAS M. FURTH**

MATTHEW H. COHEN*
WILLIAM E. HAMMOND**
JOHN S. LEGO***
ALISA L. SILVERSTEIN*

May 13, 2008

*ADMITTED IN NY & NJ
**ADMITTED IN NY ONLY
***ADMITTED IN NY & CA
†ADMITTED IN NY, NJ & PA
††ADMITTED IN NY, NJ, CT & GA

VIA ECF AND
COPY VIA HAND DELIVERY

Hon. Gerard E. Lynch
United States District Judge
United States Courthouse
500 Pearl Street
Room 910
New York, New York 10007

Re: Samuel A. Judd v. Take-Two Interactive Software, Inc.
07 Civ. 7932 (GEL)
Our File No. 2923.01

Dear Judge Lynch:

We represent the plaintiff, Samuel A. Judd, in the above referenced action.

On Friday, May 2, 2008, we e-filed (and thereby served on the defendant) the plaintiff's motion to compel and for other relief pursuant to Fed.R.Civ.P 37. On Monday, May 5, 2008, the Clerk advised us that we had erred in e-filing as a single combined document the Notice of Motion and supporting Declaration. Therefore, on that same day, we re-filed the Notice of Motion and supporting Declaration and Memorandum of Law.

Local Civil Rule 6.1(a)(2) mandates that opposition papers be served within four (4) business days after service of a Rule 37 motion. Therefore, the defendant's time for serving opposition to the motion has expired, and the defendant has neither served opposition papers nor otherwise communicated with our office with regard to the motion (or any issues raised therein). Accordingly, we request that the Court treat the motion as fully submitted, and deem the defendant's failure to oppose the motion as additional, if not independently sufficient, grounds for granting in full all of the relief for which the plaintiff applied. *E.g., Fisher v. Vassar College*, 70 F.3d 1420, 1452 (2d Cir. 1995) (Failure to timely file opposition brief constituted waiver of objection to relief sought); *Bender v. General Services Administration*, 2006 WL 988241*1

KUDMAN TRACHTEN ALOE LLP

Honorable Gerald E. Lynch

May 13, 2008

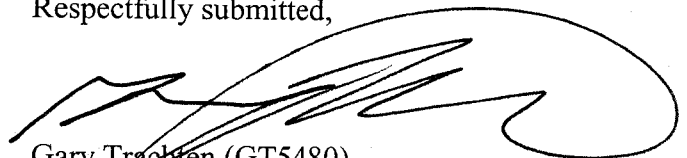
Page 2

(S.D.N.Y.) (treating motion “fully submitted” when opposition is not timely filed under Rule 6.1 and where the respondent did not timely request an extension of time); *Min v. Target Stores*, 2008 WL 1771873*1 (E.D.N.Y.) (declining to consider response that was untimely under Local Civil Rule 6.1); *Patsy’s Italian Restaurant, Inc. v. Banas*, 2006 WL 2620639*1 (E.D.N.Y.) (treating plaintiff’s Rule 37 motion to compel as unopposed when not timely responded to); *International House of Pancakes v. Merzel*, 1998 WL 846777*1 (E.D.N.Y.) (rejecting opposition papers as untimely under Local Civil Rule 6.1). Please treat this letter as a “reply” to the defendant’s non-service of answering papers.

Number 2C of Your Honor’s Individual Practices directs that at the time the reply is served, the movant submit to Chambers two (2) courtesy copies of all motion papers. In view of the defendant’s failure to answer the motion and our above “reply” to that failure, we are delivering courtesy copies of the papers (including copies of this letter) contemporaneously with our e-filing of this letter. The hand delivered “courtesy copy” hereof will serve as a cover letter to the courtesy copies of the motion papers.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gary Trachten', with a large, sweeping loop at the end.

Gary Trachten (GT5480)
Attorney for Plaintiff

Enclosures w/hand delivery only
cc: Kathleen M. McKenna
(via ECF) w/o enclosures